IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1723 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANKERJI KASTURJI

Versus

GULAM MOHMED MUSABHAI

Appearance:

1. Civil Revision Application No. 1723 of 1997

MR KL DAVE for Petitioner

MR GULAM MOHMED MUSABHAI, Respondent No. 1 IN-PERSON

Respondents Nos. 2 to 8 :: Served

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/10/2002

ORAL JUDGEMENT

This Revision Application arises from the judgment and order dated 22nd October, 1997 passed by the

Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No. 142 of 1990. The petitioner before this Court is the Appellant-Defendant.

The respondents-plaintiffs are the owners of the building known as "Musabhai-ni-Chawl" situated at Ahmedabad. The petitioner-defendant is the tenant of one of the Huts bearing municipal census No. 27/229, city survey No. 143/236 [hereinafter referred to as, "the suit premises"]. The suit premises was leased to the defendant for a monthly rent of Rs. 15/=. The plaintiffs instituted H.R.P Suit No. 4618 of 1983 in the Court of Small Causes at Ahmedabad. According to the plaintiffs, the defendant was in arrears of rent since 7th September, 1977. On the date of the suit, a sum of Rs. 1140/= was outstanding towards rent of the suit premises. The suit was contested by the defendant by filing written statement Exh. 10. The defendant denied that he was in arrears. It was stated that the plaintiffs had failed to pay municipal taxes and thus were defaulters. The whole of the property known as "Musabhai-ni-Chawl" was attached by the Municipal Corporation and was put to auction. On 11th November, 1976, the said property was purchased by the Municipal Corporation. Thus, the whole property vested in the Municipal Corporation. Since then, the Municipal Corporation had instructed the defendant to pay rent to the Municipal Corporation. Accordingly, the defendant had paid the rent to the Municipal Corporation up-to-date.

The learned trial Judge under the judgment and order dated 9th October, 1990 was pleased to pass decree for eviction and for a sum of Rs. 2,355/= being the amount of rent for the period from 7th September, 1977 to 30th September, 1990. Feeling aggrieved, the defendant preferred Civil Appeal No. 142 of 1990 before the Appellate Bench, Small Causes Court, Ahmedabad. The said appeal was dismissed by the court below under the impugned judgment and order dated 22nd October, 1997. Feeling aggrieved, the defendant has preferred the present Revision Application under section 29 (2) of the Bombay Rents, Hotels & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"].

Mr. Dave has relied upon the Sale Certificate dated 8th September, 1977 [Exh. 74]; the confirmation dated 3rd September, 1977 of the said sale granted by the Municipal Commissioner [Exh. 75], the Tax notice [Exh. 73]; the Extract of the Municipal Register [Exh. 35]. Mr. Dave has also relied upon the Rent Receipts [Exhs.

45 to 62] and the reply to the notice given by the Defendant [Exh. 38]. Mr. Dave has submitted that the Sale Certificate Exh. 74 and the confirmation [Exh. 75] proves beyond doubt that the entire property known as "Musabhai-ni-Chawl" was purchased by the Municipal Corporation in auction sale held on 11th November, 1976. Since then, the whole property is vested in the Municipal Corporation. The Municipal Corporation had given notice to the defendant to pay the rent to the Municipal Corporation. The rent paid to the Municipal Corporation is evidenced by the rent receipts Exhs. 45 to 62. In the Property Register maintained by the Municipal Corporation also, the Municipal Corporation has been shown to be the owner of the suit premises and the defendant to be the occupant thereof. Mr. Dave has further submitted that even in the reply to the suit notice [Exh. 38] given on 24th April, 1981, the defendant had categorically stated that the Municipal Corporation had become the owner of the property known as "Musabhai-ni-Chawl" and that he had been paying the rent to the Municipal Corporation and that he was not the tenant in arrears. The suit had been filed on 30th December, 1983. Thus, the suit for eviction was filed by the plaintiffs more than 32 months after the date of reply to the suit notice. Even during this period, at no point of time, the plaintiffs informed the defendant that the defendant should pay the rent to the plaintiffs and not to the Municipal Corporation nor the plaintiffs took up the matter with the Municipal Corporation. Hence, in the submission of Mr. Dave, it is proved that the entire property of Musabhai-ni-Chawl was purchased by the Municipal Corporation. The plaintiffs, therefore, had no locus to institute the suit for eviction against the defendant. In any view of the matter, the defendant having paid the rent to the Municipal Corporation, even though it may be erroneous, the defendant cannot be said to be "the tenant in arrears."

The Revision Application is contested by the respondent no. 1 who has appeared in person. He does not dispute that the property of Musabhai-ni-Chawl was put to auction sale and that the Municipal Corporation had purchased the same against the outstanding dues of municipal taxes. He has, however, submitted that the suit premises was for the first time surveyed in the year 1978-79 and was given a separate municipal census number. Till then, the municipal tax of the suit premises was not assessed at all. The question of putting the suit premises to auction sale or its purchase by the Municipal Corporation is out of question. He has relied upon the sale certificate Exh. 74 and has submitted that the said

sale certificate is in respect of certain survey numbers only which does not include the suit premises. He has also submitted that the entry made in the property register maintained by the Municipal corporation is not the conclusive proof of the title. The same, therefore, cannot be relied upon. He has also relied upon the order dated 29th October, 1983 [Exh. 36]. He has submitted that the said order had been made by the Municipal Corporation pursuant to the objections lodged by the plaintiff no. 1. Under the said order it has been declared that the properties surveyed in the year 1978-79 were the huts constructed after the date of purchase of the property by the Municipal Corporation and the said Huts were not the property purchased by the Municipal Corporation. The plaintiff no. 1 has, therefore, submitted that the suit premises was not the property purchased by the Municipal Corporation. The suit premises at all times was of the ownership of the plaintiffs. The plaintiffs are entitled to receive the rent thereof. Admittedly, the defendant had not paid rent since 7th September, 1977. The defendant has, therefore, rightly been held to be the tenant in arrears liable to be evicted from the suit premises. The plaintiff no. 1 has also submitted that the defendant is liable to be evicted from the suit premises also on the ground of disclaimer of the ownership of the plaintiffs.

The learned trial Judge has considered these evidence and also the oral evidence of the plaintiffs, the defendant and the defendant's witness - a Municipal Officer. The learned trial Judge mainly relied upon the judgment of the Appellate Bench in Revision Application No. 26 of 1984 in case of another tenant - one Ramdeen Bheruji and the decision of this Court in Civil Revision Application No. 1161 of 1984 arising from the said Revision Application No. 26 of 1984. The learned trial Judge held that the another hut in which the said Ramdeen Bheruji was the tenant was not part of the proclamation for sale by the Municipal Corporation, therefore, the suit premises also was not part of the property purchased by the Municipal Corporation. The learned trial Judge further held that the defendant had not only neglected to pay the rent to the plaintiffs but had also not paid the rent to the Municipal Corporation. The defendant was, therefore, in arrears of rent and was liable to be evicted from the suit premises as envisaged under section 12 (3)(a) of the Rents Act. The decision of the learned trial Judge has been confirmed by the Appellate Bench.

I am afraid, both the Courts below have committed grave error which has resulted into miscarriage of

justice. Exhibit 74 is the Sale-Certificate which refers to the property - Musabhai ni Chawl bearing municipal census No. 27 & 27/37/1 to 27/160/64, City Survey No. 143 to 143/166/64. It is true that the municipal census number and the City Survey No. of the suit premises has not been specifically mentioned in the Sale Certificate. However, it is an admitted fact that the suit premises is situated in and is part of the property known as "Musabhai-ni-Chawl". It is also admitted that no separate municipal census number was given to the suit premises untill the year 1978-79. It is, therefore, obvious that the suit premises is not referred to by its separate municipal census number in the sale certificate. But, that does not necessarily mean that the suit premises was not part of the property "Munsabhai-in-Chawl and that it was not purchased by the Municipal Corporation. Even in the property register maintained by the Municipal Corporation, the Municipal Corporation has been shown to be the owner of the suit premises. The argument of the plaintiff no. 1 that the suit premises was constructed after the purchase of Musabhai-ni-Chawl by the Municipal Corporation and that it did not form part of the property purchased by the Corporation, does not hold water. It is the specific case of the plaintiffs that the defendant was in arrears of rent since 7th September, 1977. That necessarily means that on 7th September, 1977, the suit premises was in existence and was leased to the defendant prior to the said date. It is not believable that on 11th November, 1976, i.e., the date of the sale, the suit premises was not in existence. The reliance placed on order Exh. 36 is also misplaced. The said order has been made pursuant to the objection lodged by the plaintiff no. 1 on 24th October, 1983 i.e., just prior to the date of the suit. The said objection was lodged with respect to the property bearing municipal census No. 27/159 to 27/162, city survey No. 143/166 to 143/169. According to the objections lodged by the plaintiff no. 1, the said four premises were constructed after the date of the sale and were not part of the property purchased by the Corporation. The said objection appears to have been accepted by the Municipal Corporation. Accordingly, a declaration has been given that the said four premises were not part of the property purchased by the Municipal Corporation on 11th November, 1976. Neither the said objection nor the order is in respect of the suit premises which bears the municipal census No. 27/229 and city survey No. 143/236. Thus, this order does not pertain to the suit premises. In my view, the Municipal Corporation having purchased the entire property of "Musabhai-ni-Chawl", the plaintiff could not have

constructed any hut over the land of the said Chawl after the date of the sale. If it is to be believed that the suit premises is part of the property "Musabhai ni chawl", then necessarily, it is purchased by the Municipal Corporation alongwith the remainder of the said property - "Musabhai-ni-Chawl". In my view, there is sufficient documentary evidence to hold that the suit premises was purchased by the Municipal Corporation on 11th November, 1976 alongwith the other parts of the property known as "Musabhai-in-Chawl". The error the Courts below have committed is in relying upon the judgments in the matter of other tenants- viz., Ramdeen Bheruji and one Somabhai Bijaldas. First, the judgments relied upon were in respect of execution proceedings initiated against the said tenants. It appears that the said tenant Ramdeen Bheruji raised the objection as to the ownership of the plaintiffs over the concerned premises in the execution proceedings which objection was overruled. The judgment in the Execution proceeding could not have been relied upon by the Courts below for considering the issue raised in the present matter. The Courts below, instead of appreciating evidence on record, have given undue weightage to the said judgments. The Courts below did not even consider the admissibility of the said judgments in evidence or the relevancy of the statements made in the said judgments. In the present case, the defendant has produced sufficient materials to bring home his defence successfully.

Once it is held that the suit premises had vested in the Municipal Corporation, the inquiry whether the defendant was a tenant in arrears or not is irrelevant in as much as the plaintiffs could not have sought eviction of the defendant from the suit premises. The court below have also erred in holding that the defendant, after the receipt of the suit notice, did not make any inquiry with the plaintiffs as to whom he should pay the rent, to the Municipal Corporation or the plaintiffs. According to me, the approach is wholly wrong. The defendant had given prompt reply to the suit notice Exh. 39. The defendant categorically stated that the suit premises had vested in the Municipal Corporation; that he had been paying the rent to the Municipal Corporation and that he was not a tenant in arrears. Inspite of the said reply, the plaintiffs did not inform the defendant to pay the rent to the plaintiffs instead of the Municipal Corporation nor did the plaintiffs take up the matter with the Municipal Corporation. It would be for the plaintiffs to assert their right of ownership over the suit premises and claim the rent thereof.

The defendant cannot be said to have denied the title of the plaintiffs so as to invite the order of eviction. The defendant did not deny the title of the plaintiffs at the inception of tenancy. However, he claimed that the subsequent change in the circumstances divested of the plaintiffs of their ownership over the suit premises. The defendant's denial of title of the plaintiffs was not only bona fide but was legitimate also.

For the aforesaid reasons, the revision petitioner should succeed. The Revision Application is allowed with costs. The impugned judgment and order dated 22nd October, 1997 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No. 142 of 1990 and the judgment and decree dated 9th October, 1990 passed by the Small Causes Court, Ahmedabad in H.R.P Suit No. 4618 of 1983 are quashed and set-aside. The suit of the plaintiffs stand dismissed. Rule is made absolute.

[Miss R.M Doshit, J.]

Prakash*